

# **THE COMPANY LAW REVIEW**

**COMPLETING THE STRUCTURE  
AS REGARDS  
SMALL AND PRIVATE COMPANIES**

**SUBMISSION TO THE DEPARTMENT OF TRADE & INDUSTRY  
FEBRUARY 2001**

**BY**

**SMALL PRACTITIONERS ASSOCIATION**

**Peter J D Mitchell FCA, Chairman**

# **I N D E X**

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3. Time Limit for Filing Small Company Accounts
4. Responses to Individual Questions Posed

## 1. EXECUTIVE SUMMARY

- 1.i SPA is a wholly independent association of small practitioners within the Institute of Chartered Accountants in England and Wales. It was formed in early 1996 because of concerns with the perceived effectiveness of our Institute's support for such members.
- 1.ii Current membership stands at 1100 practices representing just over 1300 partners or sole practitioners, of whom just over 1000 are registered to carry out statutory audit, and whom collectively service around 30,000 corporate clients, almost all of whom are small by the DTI's definition.
- 1.iii The Association's stated policy is to promote and improve the relationship between members and our Institute by providing constructive criticism together with practical proposals for improvements. Further to provide commentary and proposals to other authorities influencing our practising environment.
- 1.iv SPA responded to the earlier discussion document *Developing the Framework* to the extent that this addressed small companies; our response to *Completing the Structure* is consistent with our views given in June 2000 and earlier submissions to both the DTI and ASB on related issues.
- 1.v As in our reply to *Developing the Framework* SPA remains supportive of the proposals set out with one particular exception — the Independent Professional Review (Section 2) which SPA opposes fundamentally.
- 1.vi Enclosed at Section 3 is a commentary on the time limit for filing small company accounts with Companies House where, as there are practical difficulties caused by the suggested reduction to seven months, SPA's preference would be nine months which provides coincidence with Corporation Tax payment.

## 2. PROPOSED INDEPENDENT PROFESSIONAL REVIEW

- 2.i In SPA s response to *Developing the Framework* it was argued that such a review was inappropriate and not beneficial for the vast majority of private owner-managed small companies, and that a clear divide should exist between those companies exempt from and those subject to audit.
- 2.ii SPA concluded that, if adopted and to be acceptable, such an IPR would require to be carried out by professionally qualified accountants who would be subject to regulatory supervision. Further it would require accountants to carry indemnity insurance and expose them to potential litigation.
- 2.iii SPA s view remains that an IPR is unwelcome and its appearance will confuse rather than clarify public perception as to its purpose, where it will be viewed as audit by another name with similar expectations arising on the quality and probity of the accounts so reviewed.
- 2.iv As was previously stated in *Developing the Framework* small company directors remain reliant on the independent qualified accountant to provide business advice as well as necessary knowledge required to meet Corporation Tax and Companies House requirements.
- 2.v From SPA s informal research there appears to be no evidence of corporate clients desertion from their independent qualified accountant because such companies are now exempt from audit.
- 2.vi SPA concludes that such an IPR should not be adopted by the DTI, and notes that withdrawal of support for such a process has been announced by the Council of the Institute of Chartered Accountants in England & Wales. We believe that because exempt companies will retain their independent qualified accountant, the quality of such accounts will not suffer.

### 3. TIME LIMIT FOR FILING SMALL COMPANY ACCOUNTS

- 3.i In our response to Developing the Framework SPA suggested that Companies House filing should parallel the Corporation Tax payment — currently nine months. It is not seen why there should be a different timescale where predominantly private information is first provided to the Inland Revenue, and subsequently to the general public via Companies House.
- 3.ii There will undoubtedly remain a small proportion of companies who leave their affairs until the deadline looms, but our members' experience is that most want their accounts prepared in less than nine months to enable Corporation Tax payments to be addressed.
- 3.iii Whilst the aim of reducing the time limit for filing small company accounts is laudable, in that more up to date information would be accessible, it would be helpful if Companies House statistics were publicly available showing the percentage of small companies filing accounts within 5, 6, 7, 8, 9 and 10 months to see what benefit might be obtained from shortening time limits.
- 3.iv Given SPA's statements at (2.iv to 2.vi) that most small companies retain an independent qualified accountant to produce and subsequently file their approved accounts, the burden of this work on small practices and in particular that caused by key year end dates needs to be considered.
- 3.v Any reduction in the current ten months time limit would reduce the flexibility needed to deal with several sets of accounts having the same year end date, and the vagaries of individual clients' management of the various stages of accounts production and approval.
- 3.vi In respect of a company's accounting reference date, SPA believes that a 30 June year end is the third most frequently adopted after 31 March and 31 December. Conversely it is thought there are far fewer companies adopting 31 May or 31 July. The public availability of Companies House statistics would assist confirmation of these preferred dates.
- 3.vii It can be seen that for companies having a year end of 31 December a filing deadline of seven months falls into the summer holiday period. Similarly those companies having a 30 June year end would face the same filing deadline of 31 January as exists for personal tax returns; the bunching up experienced by accountants with the latter task has already made January the busiest month of the year in many small practices.

3.viii Not many small companies hold formal AGMs but, for those that do, it is thought that the six and a half month time limit for circulation of accounts to members will prove extremely difficult to achieve given the following average time stages:

	Time frame after Accounting Reference Date
Books of account made available to accountant	3 months
Audited or audit exempt accounts preparation completed in draft form	1_ months
Board meeting to review draft accounts held	1 month
Final accounts presented for approval	1 month

3.ix Again such a time scale takes no account of calendar periods when it would be inappropriate to hold AGMs, notable Christmas and summer holiday periods.

3.x It might be possible to reduce by one further month to eight months which would leave some flexibility to avoid inappropriate or already very busy periods.

3.xi The bottlenecks identified in (3.v to 3.ix) above may be avoided if a nine month time limit were adopted — a 10% improvement, which is SPA s preferred choice.

#### 4. RESPONSES TO INDIVIDUAL QUESTIONS POSED

(Question numbers taken from Consultation Document)

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| 2.1 | Do you agree that the requirement for sole directors to notify interests in contracts to the board should be replaced by a requirement to make disclosure to shareholders not later than the time of the making of the contract?  | Yes   |
| 2.2 | Do you believe that new companies, when adopting a modified version of the model constitution, should be required to set out in full those regulations from the model that they wish to include?  | Yes   |
| 2.3 | Are there any additional proposals that you wish to make as to requirements of the Act that should be disapplied in respect of private companies?   | Not at this time  |
| 2.4 | Do you believe that a seven month laying/AGM time limit, and the consequent six and a half months limit for circulation of accounts to members, would cause unacceptable practical problems, either in terms of preparing the accounts or the time left in which to hold the AGM? | Yes — see Section 3   |
| 2.5 | If so, do you believe that the laying/AGM limit should be decoupled from the filing limit, but with a requirement to circulate the accounts to members no later than the earlier of when the accounts are actually filed and when the meeting notice is sent out?                 | Yes — see Section 3   |
| 2.6 | If so, do you believe that the laying/AGM limit should be the present ten months or something between seven and ten months? If the latter, what time limit would you propose?   | Yes — see Section 3<br>9 months   |
| 2.7 | Would you prefer IPR to be regulated by a lighter version of audit regulation, which entails ongoing Ministerial oversight; or by an entirely new system of one-off, but withdrawable, recognition of suitable professional bodies?   | No — see Section 2  |
| 2.8 | Do you agree that it is inappropriate to align the prohibition on private companies offering their shares to the public on the definition of such offers in the POS regulations?  | It is not thought that in practice any small company would seek to offer shares to the public, here the need to reinforce such prohibition appears unnecessary. |

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| 2.9  | Do you agree that a power to prescribe safe harbour exceptions to the prohibition, drawing on the POS regulations where appropriate, to be conferred on the Companies Commission, would be desirable?  | No further comment given answer to 2.8 |
| 2.10 | If so, what suggestions would you make as to what the scope of these exemptions should be?   | No further comment given answer to 2.8 |
| 2.11 | Do you believe that private companies should be prohibited from being a party to, or assisting in any way, an application for listing or quotation of their securities on any prescribed investment exchange, being an investment exchange prescribed for the purpose by the Companies Commission? | No further comment given answer to 2.8 |
| 2.12 | Do you have any further, or alternative, suggestions for defining the appropriate limits on the powers of private companies, reflecting the lighter governance regime to which they are to be subjected?   | Not at this time                       |